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In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1546

LOUIS C. MIRIANI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. 19–25) is reported at 422 F. 2d 150.

JURISDICTION

The judgment of the court of appeals was entered on February 20, 1970 (Pet. App. 25). A petition for rehearing was denied on April 9, 1970 (Pet. App. 26) and the petition for a writ of certiorari was filed on May 8, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether existing law supports a conviction for tax fraud where the evidence shows a taxpayer's fail-

ure to report taxable income, as stated in Revenue Ruling 54–80, on political contributions which have been diverted to his personal use.

2. Whether the trial court properly denied petitioner's motion to suppress pre-custody conversations with Treasury agents (and the fruits thereof) which took place without prior reference to the warnings prescribed in *Miranda* v. *Arizona,* 384 U.S. 436.

3. Whether statements by the prosecutor in his summation, and the instructions to the jury by the trial court, constituted plain error so as to warrant reversal of the conviction despite petitioner's failure to voice any objection at trial.

STATUTE INVOLVED

26 U.S.C. 7201. Attempt to evade or defeat tax.

> Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

STATEMENT

After a jury trial in the United States District Court for the Eastern District of Michigan, petitioner was convicted on all counts of a four-count indictment alleging he had wilfully attempted to evade and defeat his income tax for the years 1959 through 1962 by filing false and fraudulent income tax returns which understated in substantial amounts his true in-

come and tax. The court imposed a fine of $10,000 on each count and sentenced petitioner to consecutive 122-day prison terms on each of the first three counts (A.A. 367a).[1]

The evidence adduced at trial showed that petitioner, a lawyer who became Acting Mayor of the City of Detroit in 1956 and was elected to that office for a four-year term in 1957, prepared all his own income tax returns (A.A. 120a, 145a). The government demonstrated, on the basis of the net worth-expenditures method of determining income, that petitioner's net worth at the starting point, December 31, 1956, was $180,874.77; however, by the end of 1962, this figure had increased to $605,339.41 (Gov't. Ex. 153). It was shown that for each of the four prosecution years, petitioner understated his taxable income in the following amounts: 1959–$87,426.81; 1960—$30,217.49; 1961—$79,466.76; 1962—$29,818.49 (Gov't Ex. 153).[2] His undeposited cash on hand as of the end of each year was shown as $3,000 (A.A. 174a–178a).[3]

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[1] The designation "A.A." refers to Appellant's Appendix in the Court below. The designation "R." refers to the transcript of proceedings at the trial, and is always preceded by the volume number and followed by the page number.

[2] These understatements resulted in tax deficiencies in the following amounts: 1959—$56,253.41; 1960—$17,421.25; 1961—$50,942.66; 1962—$16,641.72 (Gov't Ex. 154).

[3] This was because (1) petitioner told the Treasury agents he had never had any more than that in undeposited cash on hand, and (2) a study of petitioner's reported income for the years 1927 through 1956, and his expenditures for those years, disclosed he could not have accumulated more than the $180,874.77 in net worth with which he was credited as of December 31, 1956 (A.A. 174a–178a).

Petitioner was first advised by Treasury agents on September 29, 1964 (A.A. 117a–118a) that a determination had been made that his net worth between 1957 and 1962 had increased more than his reported income would warrant (A.A. 132a). At that time, he denied ever receiving any gifts (A.A. 134a), claimed a relatively small inheritance of $10,000 from his father, and stated he had virtually no campaign funds in 1957 and very few political contributions in 1961 (A.A. 136a).[4] In subsequent meetings with the agents (A.A. 139a–140a, 140a–142a, 145a–147a, 163a–164a), however, petitioner asserted he had in fact received gifts in excess of $66,000 (A.A. 140a–142a, 147a), naming initially three persons as donors (A.A. 139a–140a), then later expanding the list to six persons (A.A. 140a–142a), and finally correcting it to include eight persons (seven of whom were no longer living) (A.A. 147a).[5]

During a later conference in the Tax Division, Department of Justice, petitioner's attorneys claimed the

[4] During the investigation petitioner told the Treasury agents that the campaign statements filed with the county government were accurate reports; that he had received very little in the way of campaign contributions in the 1961 campaign and that in fact he had to spend some of his own money on the campaign; and that he had made no profit from campaign contributions in 1961 (A.A. 120a, 136a). These statements were shown to be false. The government's proof showed that at least $21,735 was contributed to petitioner's 1961 campaign by donors whose names were not listed on the statements of campaign receipts and expenses filed with the county government. (2 R. 14–15, 17–18, 22–23, 28–29, 31–32, 35–36, 39–40, 42–43; 4 R. 97–98, 107–110, 113–114, 137–138; 5 R. 5–7, 11–12, 18–19, 45–48, 50–56, 57–60, 62–63, 65, 83–85, 86–90, 95–98).

[5] The one living donor testified at trial that he had never given money to petitioner personally, but had contributed a total of $4,900 to petitioner's political campaigns over the years (4 R. 129–131). This figure contrasted with the $14,000 figure petitioner alleged he received personally from this donor (A.A. 142a).

net worth increases (for the years 1959 through 1961) derived from gifts, campaign contributions and $100,000 of undeposited cash on hand at the beginning of 1957.

At trial, with only a passing reference (A.A. 212a) to the $100,000 cash on hand at the starting point, the defense attempted to account for the bulk of petitioners' unreported income on the theory that the funds in question (approximately $198,000), which had been invested by petitioner in municipal and Treasury bonds (Pet. App. 20), had not been diverted to personal use but were being held for possible use in future political campaigns (A.A. 279a, 294a–295a, 296a–297a). Petitioner did not testify.

ARGUMENT

1. Petitioner asserts "there was no real dispute that the funds represented surplus political gifts and contributions accumulated over the several years." (Pet. 4). The question whether these funds were in fact contributed to petitioner's political campaigns and diverted to his personal use was fully argued in the trial court and decided adversely to petitioner. As pointed out by the court below (Pet. App. 21), the "sufficiency of the government's evidence to support the jury verdict of guilty is not challenged on this appeal"; accordingly, this issue warrants no further consideration by this Court.

Petitioner contends here, as he did below (Pet. 5–8), that his failure to report as taxable income accumulated political contributions invested by him in municipal and Treasury bonds cannot support a conviction for tax fraud since Revenue Ruling 54–80

does not have the force of law. That a Revenue Ruling is merely an official interpretation by the Internal Revenue Service which has been published in the Internal Revenue Bulletin, 26 CFR 601.201 (a)(5), is not disputed. However, the case law was well settled, long before Revenue Ruling 54–80 was published, that funds contributed to a political campaign and diverted to personal use constitute taxable income. *United States* v. *Jett,* 352 F. 2d 179, 182 (C.A. 6), certiorari denied, 383 U.S. 935; *O'Dwyer* v. *Commissioner,* 266 F. 2d 575 (C.A. 4), certiorari denied, 361 U.S. 862; *Reichert* v. *Commissioner,* 19 T.C. 1027, affirmed on other grounds, 214 F. 2d 19 (C.A. 7), certiorari denied, 348 U.S. 909. As the court below correctly noted (Pet. 21), Revenue Ruling 54–80 was merely "declaratory of judicial interpretation of existing law." This judicial interpretation had a sound basis rooted in pronouncements of this Court to the effect that the broad sweep of the language of Section 61 (and its predecessors) indicates the purpose of Congress to use the full measure of its taxing power to tax income from whatever source derived. *Helvering* v. *Clifford,* 309 U.S. 331, 334; *Rutkin* v. *United States,* 343 U.S. 130, 139; *Commissioner* v. *Glenshaw Glass Co.,* 348 U.S. 426, 429. It would be an anomaly to hold that in taxing "all income from whatever source derived" (26 U.S.C. 61), Congress intended to exclude diverted political contributions, even though they are not listed among the designated statutory exclusions from income (26 U.S.C. 101 through 122). Moreover, it should be noted that this contention has not been properly preserved by petitioner for appellate review

but is a mere afterthought on appeal which was not raised at the trial (Pet. 10). There, petitioner's own expert witness admitted that when political contributions are diverted to personal use they become taxable income (8 R. 46).[6]

2. Petitioner next contends (Pet. 11–13) that because the Treasury agents failed to give him the warnings set forth in *Miranda* v. *Arizona*, 384 U.S. 436, his statements to the agents (and the fruits thereof) should have been suppressed on his pretrial motion. The trial court's denial of that motion, he argues, violated his privilege against self-incrimination and his right to counsel. This point, too, is without substance. The court below held (Pet. App. 23–24) that since petitioner was neither in custody, nor otherwise deprived of his freedom in any significant way, at the time he made the incriminating admissions the requirements of *Miranda* did not apply. This is in accord with the well-established rule in the Sixth Circuit, *United States* v. *Maius*, 378 F. 2d 716, 718–719, certiorari denied, 389 U.S. 905, and in seven other circuits, *Morgan* v. *United States*, 377 F. 2d 507, 508 (C.A. 1); *United States* v. *White*, 417 F. 2d 89 (C.A.

[6] Petitioner complains (Pet. 9–10) that the Department of Justice brought no proceedings against United States Senator Thomas Dodd for attempted evasion of his income tax, and argues that the publicized facts of the Dodd case are similar to the facts in petitioner's case. However, in the Dodd case the Department concluded that the proof available to it was insufficient to warrant seeking an indictment.

2), certiorari denied, 397 U.S. 912; *United States* v. *Mancuso,* 378 F. 2d 612, 619 (C.A. 4), certiorari denied, 390 U.S. 955; *Agoranos* v. *United States,* 409 F. 2d 833, 835 (C.A. 5), certiorari denied, 396 U.S. 824; *Cohen* v. *United States,* 405 F. 2d 34 (C.A. 8), certiorari denied, 394 U.S. 943; *Feichtmeir* v. *United States,* 389 F. 2d 498 (C.A. 9); *Hensley* v. *United States,* 406 F. 2d 481, 484 (C.A. 10).[7]

Petitioner asserts (Pet. 11–12), however, that these holdings, including the one in the case at bar, are in conflict with the Seventh Circuit's decision in *United States* v. *Dickerson,* 413 F. 2d 1111 (C.A. 7). In *Dickerson,* a prosecution for willful failure to file income tax returns, the court upheld a suppression order on the ground that the special agent had failed to give the *Miranda* warnings "at the inception of the first contact with the taxpayer after the case has been transferred to the Intelligence Division". *Id.* at 1117. The holding however, was expressly restricted to "interrogations taking place after the date of this decision", July 28, 1969. *Ibid.* Thus, even if the *Dickerson* rule were applied to the case at bar, the statements by petitioner, made during conversations with Treasury agents in 1964, would not be inadmissable.

Petitioner urges that the apparent conflict between the circuits on this issue warrants further review of the question by this Court. However, in view of the purely prospective nature of the *Dickerson* holding and the present policy of the Internal Revenue Service

[7] *Mathis* v. *United States,* 391 U.S. 1, furnishes no support for petitioner's contention. In that case, the defendant taxpayer was in custody during the interrogation by the Treasury agent.

to give virtually full *Miranda* warnings to all taxpayers when they are first interviewed by a special agent,[8] there should be few, if any, future cases which will meet a different fate in the Seventh Circuit than in any other circuit. See, *e.g., United States* v. *Campione,* 416 F.2d 486, certiorari denied, 397 U.S. 909.

3. Petitioner's argument (Pet. 14) that the trial court suggested in its instruction to the jury that petitioner was a taker of bribes is equally without merit. The instruction in question (Pet. 14–15; A.A. 339a–340a) simply informed the jury that if petitioner received funds from donors in consideration for past favors or preferment, or in the expectation or hope of future favors or preferment, such funds would constitute taxable income to him. Clearly, this was a correct statement of the law which contained no suggestion of bribery, and which, when read in the context of the instruction just preceding it (A.A. 338a–339a), was fair to petitioner. Moreover, petitioner made no objection to the instruction at trial, as required by Rule 30 of the Federal Rules of Criminal Procedure, and, in view of the finding below (Pet . App. 22) "that the jury was adequately in-

[8] By news release dated November 26, 1968, the Internal Revenue Service announced that henceforth a special agent on his first visit to a taxpayer must warn him of his constitutional rights, including the right to counsel, but not including the proffer of legal aid unless the taxpayer is in custody. The news release notes that this "new procedure goes beyond most legal requirements that are designed to advise persons of their rights." 1968 CCH Fed. Tax Reporter, par. 6946; 1968 Prentice-Hall Fed. Taxes, par. 55,476.

structed," his belated challenge here does not warrant further review.

Petitioner also points to several sentences spoken by the prosecutor during his lengthy summation (9 R. 5–18; 9 R. 54–78) and argues (Pet. 15) that these, too, unfairly suggested to the jury that petitioner was a recipient of bribes. Again, this assertion was not properly preserved for appellate review; there was no objection at trial. Cf. *United States* v. *Kravitz*, 281 F.2d 581 (C.A. 3), certiorari denied, 364 U.S. 941. Nevertheless, the court below evaluated the contention and held (Pet. 22) that, "the isolated portions of the summation now complained of * * * could not possibly have deprived [petitioner] of a fair trial."

CONCLUSION

For the foregoing reasons, it is submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted.

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